

Testimony of Joe Jacquot, Deputy Attorney General of Florida
Health Care Litigation
July 15, 2010

Good morning. My name is Joe Jacquot and I am the Deputy Attorney of Florida. On behalf of myself and Florida Attorney General Bill McCollum, I appreciate the opportunity to discuss the adverse impact on the States and individuals of the federal health care law, including the current litigation *Florida v. HHS* in which 20 bipartisan States have challenged the federal government.

On March 23, Florida Attorney General McCollum on behalf of the States filed this lawsuit minutes after the health care reform act was signed into law by President Obama. In an amended complaint filed on May 14, Florida was joined by 19 other states along with the National Federation of Independent Business (NFIB) on behalf of its members nationwide as well as several individuals (the States lawsuit can be found at: [http://myfloridalegal.com/webfiles.nsf/WF/JFAO-85FNM9/\\$file/Complaint.pdf](http://myfloridalegal.com/webfiles.nsf/WF/JFAO-85FNM9/$file/Complaint.pdf)).

Currently the litigation is before Judge Roger Vinson at the federal District Court in Pensacola, Florida. The U.S. Department of Justice filed its Motion to Dismiss on June 14 and the States will respond with our brief on August 6. The Judge has set September 14 as the hearing date on the Motion to Dismiss.

The litigation brought by the States at its essence is about our nation's founding principles of a limited government and individual liberty. The Founding Fathers set up specific, enumerated powers of Congress in our Constitution to allow for the States have a role in a system of federalism and for individuals to retain certain freedoms. The federal health care law tramples on these founding principles.

The States lawsuit makes essentially two challenges: first on the individual mandate and second in regard to state sovereignty. The States claim that the individual mandate in the federal health care law exceeds Congress' powers under the Constitution, primarily the Commerce Clause (Article I, Section 8). I have attached a January 19, 2010 memorandum sent by the Florida Attorney General to Speaker Pelosi and Majority Leader Reid (as well as Republican leadership) warning of the unconstitutional concerns with the individual mandate.

There has been much scholarship on the individual mandate – from David Rivkin and Lee Casey writing initially in the Wall Street Journal to the Heritage Foundation, the Cato Institute, the Federalist Society, and a number of academics

and legal professionals. At bottom, the lawsuit alleges that the U.S. Constitution does not provide the federal government the power to force an individual to engage in activity, or be penalized for inactivity, when that individual is not substantially affecting interstate commerce.

Furthermore, as the Department of Justice argues that the individual mandate is instead a tax (in contradiction to President Obama's assertion that it is not), the States claim it would then be an unconstitutional direct tax in violation of Article I, Section 9. The individual mandate penalizes any American who chooses not to purchase health care insurance coverage. This is essentially a tax on doing nothing.

Second, the States lawsuit challenges the federal health care law due to its infringement of state sovereignty in violation of the Constitution (Article I and 10th Amendment). The federal health care act directly harms states, enabling the federal government to coerce states and manipulate state resources in unprecedented ways, including:

- Passing on large additional Medicaid costs – vast new coverage requirements, new administrative and oversight costs, and higher reimbursement rates.
- Providing in the Medicaid program for a gross expansion in government bureaucracy.
- Altering the Medicaid program significantly, making it financially infeasible for states to remain in the program because of its tremendous cost, but also providing no other means except through Medicaid to cover those with incomes below 100% of the federal poverty level.
- Intruding on state regulatory process, and co-opting state resources by requiring set up and operation of new insurance exchange and provider networks, including an impact on state resources.
- Imposing a mandate on States as employers to provide certain health care insurance benefits to state officers and state employees.

Florida alone will be required to vastly broaden its Medicaid eligibility standards to accommodate upwards of 50 percent more enrollees, or over a million new Medicaid participants in Florida. Florida's Medicaid program

currently consumes more than a quarter of the State's financial outlays and the federal health care law will cost the Florida program up to an additional \$1.2 billion a year. This burden comes at a time when states face severe budget cuts to offset shortfalls in already difficult economic circumstances.

The States lawsuit is simply about the Constitutional limits being exceeded by the federal government to the detriment of State budgets and individual freedom. The Attorneys Generals and States have an obligation to assert our state sovereignty, defend individual liberty, and uphold the Constitution.